

E-filed 6/1/06

DANIEL E. ALBERTI (State Bar No. 68620)
LISA S. BLACKBURN (State Bar No. 178826)
McDERMOTT WILL & EMERY LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
Telephone: 650.813.5000
Facsimile: 650.813.5100

MARK G. DAVIS (*Pro Hac Vice*)
RONALD J. PABIS (*Pro Hac Vice*)
BUREDEN J. WARREN (*Pro Hac Vice*)
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, NW
Washington, DC 20005-3096
Telephone: (202) 756-8000
Facsimile: (202) 756-8087

Attorneys for Plaintiff and Counterdefendant

**HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS, B.V.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS, B.V.**

Plaintiff,

v.

**GS MAGIC, INC.; GS MAGICSTOR,
INC.; and RIOSPRING, INC.**

Defendants.

**GS MAGIC, INC.; GS MAGICSTOR,
INC.; and RIOSPRING, INC.**

Counterclaimants.

v.

**HITACHI GLOBAL STORAGE
TECHNOLOGIES NETHERLANDS, B.V.**

Counterdefendant.

CASE NO. CV-04-05460 JF

**PLAINTIFF'S ADMINISTRATIVE
REQUEST FOR LEAVE TO FILE
DOCUMENTS UNDER SEAL
PURSUANT TO CIVIL L.R. 79-5;
[PROPOSED] ORDER**

ADMINISTRATIVE REQUEST

Pursuant to Civil Local Rules 7-10(b) and 79-5 and to the Protective Order in this case, Plaintiff and Counter Defendant Hitachi Global Storage Technologies Netherlands, B.V. (“HGST”) moves the Court for leave to file under seal documents lodged with the Court on May 30, 2006. HGST's motion and the declaration in support of that motion contain highly sensitive financial, sales and pricing information of HGST, the disclosure of which would likely harm HGST's competitive position if it were disclosed publically and to the employees of Defendants. This information is "Confidential - - Attorneys Eyes Only" information under the Protective Order. Defendants, however, have failed to retain counsel in violation of this Court's Orders. Thus, HGST is serving Defendants with redacted versions of the motion and attached declarations.

Moreover, the Protective Order in this case, entered on June 13, 2005 by Magistrate Judge Richard Seeborg, provides that documents in this action that contain or refer to information designated by a party as “Confidential” or “Highly Confidential—Counsel Eyes Only” must be filed under seal.

This request is based upon the below memorandum, accompanying declaration of Daniel E. Alberti (“Alberti Decl.”), the pleadings and papers on file in this action, and such other evidence and argument as may be presented to the Court.

MEMORANDUM

Pursuant to Civil Local Rule 79-5, the Court may order a document that contains confidential information be filed under seal for good cause. HGST respectfully submits that good cause exists for filing under seal the following documents lodged with the Court on May 30, 2006:

- Notice of Motion and Motion for an Award of Damages Under 35 U.S.C. § 284 and for Attorney Fees under 35 U.S.C. § 285; Memorandum of Points and Authorities. HGST's motion and the declaration in support of that motion contain highly sensitive financial, sales and pricing information of HGST, the disclosure of which would likely harm HGST's competitive position if it were disclosed

publically and to the employees of Defendants. This information is "Confidential - - Attorneys Eyes Only" information under the Protective Order. Defendants, however, have failed to retain counsel in violation of this Court's Orders. Thus, HGST is serving Defendants with redacted versions of the motion and attached declarations.

- Declaration of Larry Swezey in Support of Plaintiff's Claim for Patent Infringement Damages. HGST's motion and the declaration in support of that motion contain highly sensitive financial, sales and pricing information of HGST, the disclosure of which would likely harm HGST's competitive position if it were disclosed publically and to the employees of Defendants. This information is "Confidential - - Attorneys Eyes Only" information under the Protective Order. Defendants, however, have failed to retain counsel in violation of this Court's Orders. Thus, HGST is serving Defendants with redacted versions of the motion and attached declarations.
- Declaration of Richard Lettiere in Support of Plaintiff's Claim for Patent Infringement Damages. HGST's motion and the declaration in support of that motion contain highly sensitive financial, sales and pricing information of HGST, the disclosure of which would likely harm HGST's competitive position if it were disclosed publically and to the employees of Defendants. This information is "Confidential - - Attorneys Eyes Only" information under the Protective Order. Defendants, however, have failed to retain counsel in violation of this Court's Orders. Thus, HGST is serving Defendants with redacted versions of the motion and attached declarations.
- Declaration of Ronald J. Pabis in Support of Plaintiff's Claim for Attorney Fees Under 35 U.S.C. § 285. HGST's motion and the declaration in support of that motion contain highly sensitive financial, sales and pricing information of HGST, the disclosure of which would likely harm HGST's competitive position if it were disclosed publically and to the employees of Defendants. This information is

"Confidential - - Attorneys Eyes Only" information under the Protective Order.

Defendants, however, have failed to retain counsel in violation of this Court's Orders. Thus, HGST is serving Defendants with redacted versions of the motion and attached declarations.

The parties treat information about the operation of their products, their products' source code version numbers, their products' release types, their products' internal project names, their products' release dates, and their products' platforms as confidential and proprietary information. The parties may be at a competitive disadvantage if their competitors obtain this information and incorporate this information into their own design, development, marketing, and sales operations. Consequently, this information has been designated "Highly Confidential – Counsel Eyes Only" information, and HGST requests that these documents be filed under seal.

Furthermore, on June 13, 2005, Magistrate Judge Richard Seeborg entered the Protective Order in this case. *See* Alberti Decl. ¶ 2. The Protective Order governs the use of confidential information in these proceedings. The Protective Order provides in pertinent part that “[a]ny document to be filed with the Court which refers to, or contains, any ‘Confidential’ or ‘Highly Confidential—Counsel Eyes Only’ discovery shall be filed under seal pursuant to Civil Local Rule 79-5.” Protective Order at ¶ 10.

Dated: May 30, 2006

McDERMOTT, WILL & EMERY LLP

By: _____ /s/
Daniel E. Alberti

DANIEL E. ALBERTI (State Bar No. 68620)
LISA S. BLACKBURN (State Bar No. 178826)
McDERMOTT WILL & EMERY LLP
3150 Porter Drive
Palo Alto, CA 94304-1212

MARK G. DAVIS (*Pro Hac Vice*)
RONALD J. PABIS (*Pro Hac Vice*)
BUREDEN J. WARREN (*Pro Hac Vice*)
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, NW
Washington, DC 20005-3096

Attorneys for Plaintiff and Counter Defendant

Hitachi Global Storage Technologies
NETHERLANDS, B.V.

McDERMOTT, WILL & EMERY LLP
ATTORNEYS AT LAW
PALO ALTO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

Upon good cause shown, IT IS HEREBY ORDERED that the following documents lodged with the Court on May 30, 2006 be filed under seal:

- Notice of Motion and Motion for an Award of Damages Under 35 U.S.C. § 284 and for Attorney Fees under 35 U.S.C. § 285; Memorandum of Points and Authorities;
- Declaration of Larry Swezey in Support of Plaintiff's Claim for Patent Infringement Damages;
- Declaration of Richard Lettiere in Support of Plaintiff's Claim for Patent Infringement Damages; and,
- Declaration of Ronald J. Pabis in Support of Plaintiff's Claim for Attorney Fees Under 35 U.S.C. § 285.

Dated: 6/1/06


JEREMY FOGEL
UNITED STATES DISTRICT JUDGE

MPK 86982-1.064318.0020

McDERMOTT, WILL & EMERY LLP
ATTORNEYS AT LAW
PALO ALTO